

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In The Matter Of

Review of Regulatory Requirements for  
Incumbent LEC Broadband  
Telecommunications Services

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CC Docket No. 01-337

**COMMENTS OF IP COMMUNICATIONS CORPORATION ON THE NOTICE OF  
PROPOSED RULEMAKING RELATING TO THE REGULATORY TREATMENT OF  
ADVANCED SERVICES PROVIDED BY DOMINANT WIRELINE CARRIERS**

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On December 20, 2001, the Federal Communications Commission's ("FCC" or the "Commission") released its Notice of Proposed Rulemaking relating to treatment of dominant wireline providers when providing advanced services ("*Non-dominant NPRM*" or "*NPRM*"). IP Communications ("IP") is a Competitive Local Exchange Carrier ("CLEC") whose offerings provide broadband solutions to its customers. IP will be immediately affected by the ruling on the *NPRM*.

**INTRODUCTION AND SUMMARY**

IP files these comments in response to the *NPRM* regarding regulatory treatment of incumbent local exchange carrier ("ILEC") broadband telecommunications services. The Commission requests comment on various specific issues as to appropriate regulatory requirements including existing requirements for tariff filing, tariff support, and pricing requirements.<sup>1</sup>

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<sup>1</sup> *Non-dominant NPRM* at 4.

IP agrees that broadband deployment, fostering broadband competition, promoting innovation, and eliminating unnecessary regulation are valid goals.<sup>2</sup> The history of the advanced service market has shown that the fostering of competition by a large number of providers has been the best means to promote innovation. Moreover, while all of the list goals are valid, given the early stages of competition, eliminating unnecessary regulation are not as high a priority as fostering competition, which promotes innovation and fosters deployment. (For example, IP and other carriers have experienced the phenomenon that after we initiate the process of collocating a DSLAM in a non-urbanized area, the ILEC – or its affiliate – deploys their own.) ILECs had access to digital subscriber line (“DSL”) technology, long before enactment of the federal Telecommunications Act (“FTA”), they chose to suppress the deployment of that technology to maximize profits from business customers obtaining T1 services. The result was years of delay in broadband deployment to residential and small business customers. It was not until CLECs, after fighting at the Commission and state commissions for years, won the ability to introduce DSL into the marketplace and developed many other innovative technologies based upon the unbundling rules implementing the FTA did ILECs begin deploying DSL technology. And, if ILECs have their way to prevent or narrow access to network facilities, particularly when those facilities are integrated with last mile facilities, that experience will likely repeated itself. Only with the entrepreneurial and innovative competitive industry pushing them along will the ILECs have the incentive not to sit on the level of broadband capability of the day and “milk” their investments to the detriment of new and needed technology.

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<sup>2</sup> *Non-dominant NPRM* at 4.

**I. It is Premature to Consider the Issue of Whether an ILEC is Non-dominant for DSL services.**

In parallel to this proceeding, the Commission is considering numerous proposals relating to ILEC unbundling obligations and CLEC access to facilities. Clearly, any decision regarding the dominance of ILECs will, at least in part, be based on the continued ability of CLECs to ubiquitously and economically offer broadband services to consumers. As a result, it is critical that this proceeding wait until the results of the Commission's current review of unbundling obligations are concluded. If significant changes to the unbundling rules are put in place that lessen a CLEC's ability to access unbundled network elements ("UNEs") at rates based on total elemental long run incremental cost ("TELRIC"), then it may require years to observe the effects of such rule changes before the Commission could make an informed decision on ILEC dominance in the DSL marketplace.

Also, the Commission asks whether the definition of the relevant product market should consider reasonably substitutable services and customer classes.<sup>3</sup> However, it must be considered that: (1) DSL, cable modem, wireless, and satellite broadband access are not directly substitutable with one another, and (2) any consideration of substitutability is necessarily limited to today's technology and does not consider the integrated nature of the ILEC network.

Regarding "substitutability", wireless and satellite broadband capabilities are currently limited and suffer from geographic and climatic limitations. A customer seeking stable access still will choose a broadband capability supported over wires. Moreover, satellite and wireless broadband access is generally far more expensive than DSL. Second, cable modem access has sufficient drawbacks depending on a customer's needs. If a customer seeks a more secure connection or is a business that generally does not have cable access, cable is not a substitute,

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<sup>3</sup> *Non-dominant NPRM* at 11-15.

even if the ILEC maintains a price higher than what would have existed if CLECs continued to be viable competitors. In other words, the ILEC would continue to have the ability “to raise prices by restricting its own output ... or ... to raise prices by increasing its rivals’ costs or by restricting its rivals’ output through the carrier’s control of an essential input, such as access to bottleneck facilities, that its rivals need to offer their services.”<sup>4</sup>

Best-case scenario in many situations would approximate a duopoly with one dominant ILEC and one dominant cable provider. We have seen the results.

As the number of competitive DSL providers has diminished, the prices charged by ILECs and cable companies for high-speed access has increased. For example, when SBC raised its residential DSL rates to approximately \$50 dollars, cable modem providers raised their rates to \$45. It is the price leadership mentality leading to higher prices that has lessened the number of consumers that have purchased broadband connections. And, there is no reason to expect that to change without a vibrant CLEC industry competing and scrapping for customers.

## **II. If the Commission is Inclined toward Lessening Administrative Regulation, it should take a Narrowly Tailored Approach.**

Although IP believes that there is currently too much regulatory and market uncertainty at this is time to consider a change in regulatory obligations, if the Commission is inclined to ease some regulatory requirements, i.e. loosening tariff filing obligations, the Commission should consider narrowly tailored means rather than making a non-dominant finding. Looking at the SBC petition, in its prayer for relief, SBC asked for very specific regulatory relief to obligations such as filing requirements. If the FCC believes that relief similar to what SBC sought is warranted at this time, which IP does not, the FCC should consider the authorization of specific waivers from filing requirements rather than making a nondominance finding. Such a result is wholly consistent with SBC’s requested relief while not prejudging market

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<sup>4</sup> *Non-dominant NPRM* at 16.

developments and/or reaching a conclusion that may have broader implications than what was sought by SBC or intended by this Commission.

## **CONCLUSION**

IP appreciates the opportunity to provide comment on the *NPRM*. As has been explained throughout, IP strongly believes that it would not be appropriate for the Commission to declare the ILECs non-dominant in the retail broadband market when there exists such a high degree of regulatory and market uncertainty. This is particularly true when the consequences of such a ruling are less than clear. At most, the Commission should not issue a global finding of nondominance but seek a means of waiving applicability of specified regulations, e.g. tariff filing obligations. Such an approach provides the regulatory relief sought by ILECs while not providing a ruling that could result in unintended consequences.

Respectfully submitted,

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